

Sellers that purchase telecommunications units from telephone service providers and sell them at retail to their customers are required to collect the Illinois Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.110. (This is a GIL).

August 27, 1999

Dear Xxxxx:

This letter is in response to your letter dated July 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

In the following pages, I am requesting a letter ruling in response to my query from the appropriate bureaus.

The reason for sending you exact replicas, can be found at the header of the memo, under the subheading entitled 'Re:', within the parentheses. I believe this is the most pragmatic way of approaching this highly complex matter. Hence, if there are two separate departments this issue must reach, due to the distinctive type of taxes and/or surcharges, I figure it would reach them much more rapidly and efficiently than if I took the alternate option, of including the various taxes and surcharges into one memo.

However, I have no problem accepting one letter ruling responding to the two simultaneously. But I would request, that if you do so, you please clearly delineate the different type of taxes, and each as it pertains to my specific inquiry; i.e. 'Prepaid Phone Cards'.

The Illinois Retailers' Occupation Tax does not apply to sales of prepaid telephone calling cards by retailers to customers. The Illinois Telecommunications Excise Tax consequences from sales of telephone cards would vary depending upon whether we would consider the sellers to be retailers of telecommunications.

Retailers who purchase telephone cards from telephone service providers and then resell the cards to customers for marked-up prices are not responsible for collecting and remitting the Telecommunications Excise Tax from the customers. The excise tax is incurred at the time the telecommunications originate or are received in a taxable manner, and the amount of telecommunications charges for which the cards are redeemed by the telephone service providers should include any amount of Telecommunications Excise Tax and Telecommunications Municipal Infrastructure Maintenance Fee incurred. The telephone service providers charge the phone calls and the tax against the balance of the cards, as they are responsible for collecting and remitting the tax. Under this scenario, the Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 et seq.), effective January 1, 1998, which provides for the imposition of various

fees upon telecommunications retailers would not be applicable to the sale of cards by retailers.

On the other hand, retailers that purchase telecommunications units from telephone service providers and sell them at retail to their customers present situations similar to hotels that sell telecommunications services. See 86 Ill. Adm. Code 495.110, enclosed. In these cases the retailers would be required to register as telecommunications retailers and collect and remit Telecommunications Excise Tax. The tax base would be the amounts charged to card purchasers for the taxable services subsequently provided (i.e. calls that originate or terminate in Illinois). When such cards are sold in Illinois, the Department presumes calls will originate or terminate in this State. Retailers have the burden to establish that charges are exempt from the Telecommunications Excise Tax. The only way to document this would be through records of the telephone service providers. Therefore, as a practical matter, because retailers will not know when sales are made what taxable services cardholders will later consume, retailers should charge the tax on the full sales prices of the cards. Under this scenario, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) which provides for the imposition of various fees upon telecommunications retailers would be applicable to sales made by retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b)) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c)). These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b)).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.